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LAVON WILLIAMSON

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

LAVON WILLIAMSON, a married  
person,

Plaintiff,

v.

Life Insurance Company of North  
America, a foreign corporation,

Defendant.

**Case No.: 2:10-cv-00499-KJD-RJJ**

**RESPONSE TO LINA'S  
STATEMENT OF UNDISPUTED  
FACTS**

Plaintiff responds to Defendant Life Insurance Company of North America's  
Statement of Undisputed Facts as follows:

1. Plaintiff does not dispute ¶1.
2. Plaintiff does not dispute ¶2.
3. Plaintiff does not dispute ¶3.

1           4.     Plaintiff does not dispute ¶ 4.

2           5.     Plaintiff does not dispute ¶5.

3           6.     Plaintiff does not dispute ¶6.

4           7.     Plaintiff does not dispute ¶7.

5           8.     Plaintiff does not dispute ¶8.

6           9.     Plaintiff does not dispute ¶9.

7           10.    Plaintiff does not dispute ¶10.

8           11.    Plaintiff disputes ¶11. Plaintiff admits that the Form 5500 lists First  
9 Command Financial as the Plan Sponsor and Administrator, however, Defendant's filing  
10 and preparation of Form 5500s does not automatically lead to the conclusion that the plan  
11 in question is governed by ERISA.

12           12.    Plaintiff disputes ¶12. Plaintiff admits that the Form 5500 lists First  
13 Command Financial as the Plan Sponsor and Administrator, however, Defendant's filing  
14 and preparation of Form 5500s does not automatically lead to the conclusion that the plan  
15 in question is governed by ERISA.

16           13.    Plaintiff disputes ¶ 13. In 2007-2008 First Command offered accidental  
17 death, life, health, dental, temporary and long-term disability and vision benefits through  
18 fully-insured plans. (Dkt. 32-2, p. 1-20).

19           14.    Plaintiff does not dispute ¶ 14.

20           15.    Plaintiff does not dispute ¶15.

21           16.    Plaintiff does not dispute ¶16.

1           17.     Objection, hearsay. Mr. Neveu's declaration is not based on his personal  
2 knowledge, rather it is based Neveu's "review of relevant documents and discussions  
3 with appropriate personnel." (Dkt. 32). Hearsay statements in affidavits are inadmissible  
4 and cannot support a motion for summary judgment. *See* Fed. R. Civ. P. 56(e); *Beyene v.*  
5 *Coleman Security Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988).  
6

7           18.     Plaintiff does not dispute ¶18.  
8

9           19.     Plaintiff does not dispute ¶19.  
10

11           20.     Plaintiff does not dispute ¶20.  
12

13           21.     Plaintiff admits that the policy contains the identified rider, however, the  
14 presence of language indicating a plan is covered by ERISA is not dispositive of whether  
15 a Plan is governed by ERISA.  
16

17           22.     Plaintiff admits that the policy contains the identified rider; however, the  
18 presence of language indicating a plan is covered by ERISA does not make the plan  
19 governed by ERISA.  
20

21           23.     Plaintiff does not dispute ¶23, but affirmatively alleges that the only  
22 information provided to LINA by First Command was basic employment information.  
23 LINA actually made the eligibility determination. *See* PSOF at ¶ 16, 23.

24           24.     Plaintiff does not dispute that the policy contains the language quoted in  
25 Paragraph 24, however, First Command only provided LINA with census information on  
26 its employees. *See* PSOF ¶23.

27           25.     Plaintiff does not dispute ¶25, but affirmatively alleges that Williamson had  
28

1 the right to cancel his coverage at any time as well. PSOF ¶4.

2 26. Objection, hearsay. Mr. Neveu's declaration is not based on his personal  
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6 35. Plaintiff does not dispute ¶35.

7 36. Plaintiff does not dispute ¶36.

8 37. Plaintiff does not dispute ¶37.

9 38. Plaintiff does not dispute ¶38.

10 39. Plaintiff does not dispute ¶39.

11 40. Plaintiff does not dispute ¶40.

12 41. Plaintiff does not dispute ¶41.

13 Dated this 14th day of November 2011.

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15  
16  
17 CHASEY HONODEL  
18 THE COUNTERS FIRM, P.C.

19  
20 By: /s/ Lisa J. Counters

21 Amy Honodel

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